

1 we don't just talk about big versus small, rural versus urban,
2 but we also talk about the fact that in too much of America
3 most of America is excluded and certainly minority and women
4 are also very much excluded within the means of ownership of
5 our media outlets. And I hope, as Chairman Copps had mentioned
6 and I believe that Chairman Adelstein would also have
7 discussed, that there is a need to incorporate the needs of our
8 minority communities of women when we talk about ownership
9 opportunities within the media.

10 And having said that I would also hope that we would all
11 urge upon the FCC transparency, as much as possible that what
12 goes on within the FCC occur within the light of day. And if
13 it weren't for Chairman -- I wish you were chairman --
14 Commissioner Copps and now Commissioner Adelstein trying to go
15 out there and inform the public, I suspect most people in
16 America would have little understanding of what may be about to
17 occur in America. So I applaud the efforts of our two
18 commissioners participating today, but I hope that the FCC, the
19 Commission as a whole, recognizes that this must be done in a
20 transparent fashion so that we can all say, when the results
21 are finally in, that we all understood and had an opportunity
22 to comment.

23 And finally, let me focus on a few issues that are of
24 great concern to the Congressional Hispanic Caucus, to Latinos
25 throughout this country, and certainly to minorities generally

1 throughout this country, and I would include women as well.

2 Ownership. I mentioned it earlier. We've got to do
3 something about this consolidation that's occurring because
4 it's -- it's not just a matter of getting big, it's -- it's a
5 matter of a few, for the most part, white males, getting very
6 big, and we've got to stop that from happening because if we
7 want to have a diversity of view reflected in what goes out,
8 whether it's broadcast, radio, print, you need to have that
9 diversity of perspective that comes only from your background,
10 from the opportunities to have been one who grew up from those
11 origins. I would hope that the FCC, and I know Commissioner
12 Copps has been one who has always promoted this, but I hope
13 that the entire membership of the FCC will recognize this as
14 well.

15 Secondly, expertise. We're about to have final rules
16 issued soon by an organization which, for the most part, I
17 don't believe reflects the needs, desires, the background, the
18 history of women and minorities. And I would pose a question
19 that perhaps Chairman -- Commissioner Copps and also
20 Commissioner Adelstein -- I keep -- I'm -- I'm -- I'm hoping
21 more than anything else, I guess, that Commissioner, you'll
22 become a chairman. Maybe after 2004 that'll happen. But
23 getting -- moving on to other things.

24 I hope that what we can do is find that there will be ways
25 for us to address not just the ownership issue but also what

1 the FCC brings to the table in terms of expertise and resources
2 to address the issues that are important to minorities, African
3 Americans, Asian Americans, Native Americans, Latinos and
4 women. Who do you have on your staff to guide you on some of
5 these very important principles and will you have people of
6 color and women who can guide you in making those decisions? I
7 would pose that question to the chairman, Mr. Powell, to see
8 where that takes us.

9 And finally, finally, when it comes to the issues -- when
10 it comes to the issues of how minorities are treated, I hope
11 that we'll recognize as well that we have to tackle some very
12 important issues that in some cases the media outlets have very
13 little control over. Nielsen and Arbitron do a tremendous job
14 of trying to gauge ratings, but in some cases I think they do a
15 very flawed job in that regard. And too often they don't take
16 into account how many people of color, how many women are truly
17 watching what they really want, and I believe it will be time
18 soon that we examine whether the monopolies that we allow
19 Arbitron and Nielsen to maintain within the rating system will
20 be a subject of review by the FCC, or certainly I hope by
21 Congress because it seems to me that if we want to give the
22 media the best opportunity to do a good -- not only a good job
23 but a tremendous job of doing well with the airwaves that the
24 public has given to them, then we have to make sure that they
25 have the best information on which to make their decision and

1 that's where Nielsen and Arbitron truly require some oversight.

2 I would only make the final point that I believe with --
3 as Chairman Copps -- Mr. Copps -- Commissioner Copps -- it's --
4 it's ingrained, sorry -- that Commissioner Copps made, that
5 perhaps what we should do is truly look at the licensing issue.
6 That might give us a better sense of what people are doing so
7 that instead of after the fact, after a media organization has
8 not done a good job, but before we give them a license that we
9 determine what they will do and find out if they follow
10 through. I think that's a wise course of action.

11 I appreciate, Sandra, what you have done here. I'm
12 pleased to see so many people here. I hope we have some media
13 representation that will report on what goes on here today, and
14 I hope and pray that this will not be the last, certainly not
15 within the five-week period, that we hear from the chairman and
16 the commissioners on this very important issue. Thank you so
17 very much.

18 **MS. ORTIZ:** I'd also like to recognize that Congresswoman
19 Diane Watson, who could not be here today because she's flying
20 back to Washington -- the congressional recess is ending -- I
21 think Congressman Becerra is running off to catch a flight
22 also -- but she -- Congresswoman Diane Watson, who is chair of
23 the Congressional Entertainment Caucus did send a
24 representative, her press secretary, Lois Hill-Hale, who is
25 with us today and will be reporting back to the congresswoman

1 about today's events.

2 I'm also pleased to report that we have Commissioner
3 Adelstein back on line, and we'd like to hear the end -- the
4 end of that -- that setup that you had intrigued us with when
5 we got cut off so suddenly. So -- excuse me -- Commissioner
6 Adelstein.

7 **COMMISSIONER ADELSTEIN:** Well, thank you so much for
8 bringing me back. Am I back up? It's working?

9 **MS. ORTIZ:** Back up.

10 **COMMISSIONER ADELSTEIN:** All right. Well, if -- if an FCC
11 Commissioner can't telecommute, who can?

12 I was speaking about your very own William Randolph
13 Hearst, somebody of great interest to the people in L.A. and
14 somebody you know a lot about. And I'm not sure when it cut
15 off, but I was trying to say that he was trying to decide, you
16 know, people -- he was in the -- he was in the movie business
17 and he was in the newspaper business, and when he was asked why
18 he was concentrating on newspapers with a limited regional
19 appeal rather than spending his energy on motion pictures with
20 a worldwide audience, he pithily replied, "I thought of it.
21 But I decided against it. Because you can crush a man with
22 journalism and you can't with motion pictures." Well, we may
23 well be on the verge of creating a new Citizen Kane for the
24 21st century or maybe a handful of them.

25 The FCC should proceed with a lot more caution because

1 caution and speed don't mix well, particularly not when our
2 safeguards of democracy are at stake. Diverse views fuel our
3 public debate and they strengthen our democracy. We need more
4 voices in the nation's media but not just from one
5 ventriloquist. Each of you should be a part of this dialogue.
6 That's why I'm so glad we're doing what we're doing here today.
7 I can't emphasize enough the importance of your participation.
8 If we're to craft media ownership rules that best serve the
9 public interest, we've got to hear from the public. That's why
10 Commissioner Copps and I are traveling around the country to
11 hear your voices. And I'm so pleased that Commissioner Copps
12 has shown such great leadership. He was there before I got
13 there and he did a great job of setting this -- setting this
14 up.

15 So good luck and know that you're engaged in what is the
16 most critical dialogue taking place in America today. And
17 thank you for letting me be a part of it, and thank you for
18 letting me come back in after a little audio disruption there.
19 I really appreciate it. This is a great honor to be with you
20 today. Back to Sandra.

21 **MS. ORTIZ:** Thank you, Commissioner Adelstein. I'd now
22 like to introduce Matt Spitzer, who is dean of the USC Law
23 School. Dean Spitzer founded the Center for Communication Law
24 and Policy and has written extensively on telecommunications
25 issues. Dean Spitzer.

1 **DEAN SPITZER:** Pardon me. I think it works better this
2 way. You get fewer of the exploding P's in this configuration.
3 I want to say welcome to everyone. USC Law and -- Law School
4 and Annenberg School jointly sponsor the Center for
5 Communication Law and Policy. Sandra Ortiz is our executive
6 director and has put together this -- I should say this
7 conference twice and for that I want to thank her. I want to
8 thank Commissioner Copps and Adelstein and all the other
9 participants here today. I look forward to a great success.

10 I want to say two things. Then I'll sit down. I'll try
11 to be brief. First, I want to talk sort of about the tone of
12 the proceedings and second I want to introduce Christopher Yoo.

13 First, about the tone. This is not a corporate boardroom.
14 It's not a guild hall. It's an academic setting. And as such,
15 I'll give you the two-minute version of my introductory lecture
16 to my administrative law course about the difference between
17 private interest and public justifications.

18 Private interests are perfectly fine for motivating you to
19 action. But they're not always the things you can talk about
20 effectively in public as good reasons for doing something.

21 For example, I'm a teacher. I'm an educator here at USC.
22 It is entirely possible that the advent of online educational
23 schools will cost me my job. There are now online law schools
24 which are growing very rapidly. Most people who know about the
25 law school world expect about -- okay -- expect about -- about

1 a third of us to fail within the next 20 years. That is, we
2 become history. My salary, if I'm still working 20 years, will
3 almost certainly be lower than it is today because of
4 competition from online schools. None of this is a
5 justification for invoking governmental regulation to suppress
6 online education, in spite of the fact that I and others like
7 me will be hurt and that old institutions that have been around
8 for many years will be swept away. Instead, you need to make
9 arguments about students being better or worse served, being
10 better or worse educated and so forth in order to make public
11 interest --

12 (End of Side A of Tape 1, Beginning of Side B.)

13 **DEAN SPITZER:** My industry segment will disappear or even
14 I will have less creative control over my work. Why? Because
15 public interest arguments are those that are designed to
16 produce -- pardon me -- public interest arguments are sort are
17 sort of the following nature. The set of rules that govern
18 industry structure will produce an output that either produces
19 less interesting, less creative fare that is not as interesting
20 to viewers and listeners. That's a public interest argument.

21 Perhaps the industry structure produces less news in
22 public affairs that allow citizens to make informed decisions.
23 Perhaps it produces higher ad rates, which ripple through the
24 cost of purchased goods and thereby transfer large amounts of
25 money from the public to sellers of ad time. All right. These

1 would be public interest arguments. However, saying it so
2 doesn't make it so.

3 At an academic setting empirical testing is, in my
4 opinion, and by the way in the opinion of the D.C. circuit,
5 absolutely necessary. Once you've said the argument, you still
6 have to back it up.

7 Okay. I'll move on. I think the microphone is telling me
8 I've said enough in this regard and so I will. Instead I'll
9 move on to introducing our speaker. Christopher Yoo is going
10 to give us a legal overview of ownership regulations.

11 Christopher is a professor at Vanderbilt. He's prolific. He
12 writes on law and economics of telecommunication, including
13 broadcasting and cable TV. I particularly recommend an
14 extremely extensive survey and synthesis of the law about
15 vertical integration as applied to broadcasting and cable.
16 It's in the Yale Journal on Regulation. And if you don't do it
17 at least give it to someone in your General Counsel's office to
18 read because someone should know this stuff.

19 At any rate, the definition in academia of a sophisticated
20 scholar is "someone who thinks a lot like I do." And -- but
21 only -- and only sometimes do we have the qualifier "but does
22 it a little better." And so it's -- it's my pleasure to
23 introduce a sophisticated young scholar, Christopher Yoo.

24 **MR. YOO:** Well, part of the sophistication is the high
25 tech toys I get to play with. So if you'll bear with me while

1 the screen comes down.

2 It's an occupational hazard as a teacher. I'm really
3 troubled without a blackboard, so I'm afraid this is the best
4 I'm going to be able to do here.

5 My job here is to provide a legal overview of the media
6 regulations that are comprising the biennial review that will
7 culminate apparently on June 2nd by the -- with the announced
8 attention -- intention of the Federal Communications Commission
9 to revisit a large number of media ownership rules. These
10 media ownership rules have been in play since at least the
11 1970's unchanged and have their seeds, many of them -- or their
12 origins, back in the 1930's. And I believe that we are at an
13 unprecedented crossroads in U.S. media policy for several
14 reasons.

15 First is, there are an emergence of tremendous new
16 communications technologies that have opened up the policy
17 space since these rules were last revisited in the 1970's.
18 There's a tremendous expansion in the number of broadcast
19 outlets, television stations. As recently as 1980, the average
20 household received fewer than four. The average U.S. household
21 now receives in excess of 13 over-the-air broadcast signals.
22 Cable, direct broadcast satellite systems have transformed the
23 television environment, Internet, through generation wireless
24 in the offing, all of which have dramatically changed the
25 policy environment in which we operate.

1 Second is significant changes to the legal environment.
2 The first of which is the biennial review process initiated by
3 the Telecommunications Act of 1996. For the first time the
4 federal statute requires the Federal Communications Commission
5 to revisit all of its ownership regulations every two years
6 with the presumption that absent adequate justification that
7 they will be repealed. The other thing that's happened that's
8 dramatically changed the environment is a number of recent
9 judicial decisions that have struck down a number of these
10 longstanding ownership policies. Two were decided in 2002, one
11 was decided in 2001, and they have raised serious questions
12 about whether the continuing vitality of a lot of these rules
13 and whether they'll continue to exist.

14 And lastly, I think there's a great deal of new thinking
15 about regulation. I think the seminal moment occurred when
16 President Clinton, a democrat, said, "The era of big government
17 is over." That opened up a brand new dialogue wherein people
18 of all parts of the political spectrum are willing to think
19 about new solutions to old problems and rethink the way we
20 approach classic regulatory issues.

21 The net result is many of the rules that we are going to
22 talk about today are up for grabs for the first time in 60
23 years since they were originally promulgated, and it's created
24 a tremendous amount of interest in what the future of the
25 industry will hold.

1 There are six rules under scrutiny and they actually can
2 be -- they can be categorized in three different ways, into
3 three different pairs. The first set of rules affect local
4 ownership limits. Local ownership limits within a medium.
5 Specifically there's two of these. First is, how many radio
6 stations you can own in Los Angeles. That is one medium.
7 Radio. One locality. Los Angeles or New York or Chicago. And
8 there are limits to the number of radio stations that any --
9 historically been limits that any one entity can own.
10 Similarly there are limits to the number of television stations
11 within one medium, within one geographic area, that an entity
12 can own.

13 The second set of rules also deal with local ownership but
14 not within one medium but across media. In fact -- and there
15 are two rules that are relevant in the proceedings. The first
16 is the radio-television cross-ownership limits. It's not
17 within radio, not within television, but how many radio and
18 television combinations can you own in Los Angeles or Nashville
19 or Atlanta or any of the cities in the United States.

20 The other cross-ownership restriction that's being
21 discussed is a newspaper-broadcast cross-ownership ban that has
22 been in place since the 1970's. A newspaper cannot own its --
23 newspaper broadcast -- that's broadcasting, including both
24 radio and television -- as a matter of rule cannot own a
25 newspaper -- a newspaper cannot own a radio or television

1 station in the same city in which it operates.

2 And lastly, there's two sets of restrictions currently
3 being debated that are really focused not on local markets but
4 on national markets. The first of which is called the national
5 television station ownership rule that limits the ability --
6 the number of stations that a entity can own nationwide.
7 That's aside from the number you can own in Los Angeles, but
8 can a Los Angeles owner own one in New York, in Chicago, in
9 Seattle and the different cities?

10 And the last thing is what they call the dual network
11 rule. How many broadcast television networks can one company
12 own? All of these are currently being considered and they're
13 all going to be decided apparently in June.

14 Taking them one at a time. The first set of rules is the
15 local ownership limits within one medium starting with radio.
16 How many radio stations can one company own in any one city?
17 The original rule prohibited any company or any person from
18 owning more than one radio in the same city. Radio station in
19 the same city. The concern was that if there -- since there
20 were so few stations in any one market, allowing any entity to
21 control more than one them would give them an inordinate amount
22 of control over the points of view expressed in that market.

23 What has happened since these rules were promulgated back
24 in the 1930's, what happens is we've had a radical expansion in
25 the number of radio stations that are now available compared to

1 what existed in the 1930's or even what existed in the 1970's.
2 And in fact, as the number of radio stations expands radically,
3 the concern that any two of them would be controlled by the
4 same entity diminishes because the problems go down.

5 Second, there is a realization that group ownership of
6 radio stations within a market allows the realization of
7 certain efficiencies. Two small-share stations can combine one
8 sales force and make sales calls more effectively. And if
9 they're niche radio stations that are pointed at different
10 markets, they can cross-sell advertising to a single advertiser
11 and it makes it possible. The FCC has recognized through a
12 series of rule-makings that it's made it more possible for them
13 to deliver more programming.

14 So instead of a blanket ban, they've now adopted what's
15 called -- what I'll call a tiered approach. The tiered
16 approach is really determined by the number of radio stations
17 in a particular market. The different tiers and the amount of
18 the ownership restrictions are determined by the number of
19 stations in the market. Now L.A. will be 45 or more, the next
20 tier down is 30 to 44, 15 to 29 and on farther down. The more
21 stations that are on the market, the more you allow individual
22 stations -- you can allow individual stations to be under the
23 same ownership and not have the kind of public interest and
24 anti-competitive concerns that have animated these rules.

25 And the rules as they exist today, if you have 45 or more

1 stations in the market, you get eight. If you have 14 or fewer
2 you get five. You can combine five and on down. There is one
3 thing I'd like to point out about this, is that if you look at
4 the way the tiers are set up, the distinctive aspect about this
5 is it only counts the number of other radio stations in the
6 market. So in measuring what's competition, they're looking
7 solely within one media, radium -- medium radio.

8 And they don't largely take into account other media.
9 There's an almost identical set of -- analogous set of
10 restrictions that apply to television. Again, it began
11 originally as a bar on stations owner -- owning more than one
12 television station in the market. That was very appropriate
13 when most parts of the country could not receive more than
14 three or four broadcast signals over the air. As I stated, in
15 the current environment the average U.S. household receives 13
16 broadcast stations over the air and it's now -- changed the
17 concern that these sorts of combinations would raise.

18 Again, we've adopted a tiered approach. The tiered
19 approach focuses on the number of independent voices in the
20 market. If there are eight or more, one rule applies. If
21 there are seven or fewer, a different rule applies. Number of
22 voices means station groups. In other words, if two -- if
23 two -- two stations under common ownership, they're one
24 independent voice in the market. And the answer is if there
25 are seven or fewer independent voices in the market,

1 combinations of television stations are not allowed. If there
2 are eight or more combinations of television stations are
3 allowed, so long as the stations that are combining are not in
4 the top four stations in the market.

5 Again, the number of voices here is limited to television
6 voices. And looking at the amount of competition that will
7 relieve our concern for this kind of combination, we are only
8 looking at television. This is critically important because
9 this rule was invalidated by the courts in 2002. For precisely
10 its willingness to consider only television voices and is in
11 direct contrast with the next one I'd like to talk about, which
12 is where we start the cross-ownership rules.

13 So we're moving beyond where we're looking within one
14 medium and we're now looking at the number of stations that can
15 be owned jointly. There's a radio-television cross-ownership
16 rule within the same market that limits the number of
17 combinations of radio and television. Again, the original rule
18 dating back to the 1930's said one to a market. You can have
19 one AM radio station or one FM radio station or one television
20 station, but you could not own both. Both radio and television
21 or both AM and FM. As the market has broadened and the
22 technologies made it possible for us to have more, they've
23 created, again, another tiered approach based on the number of
24 independent voices in the market. Here we have three tiers.
25 One with 20 or more voices. Ten to 19, or nine or fewer, and

1 you allow a varying number of increasing level of concentration
2 and co-ownership depending on the number of voices in the
3 market.

4 Here's the critical difference, though. The voices -- in
5 counting of voices, it's no longer restricted to just radio and
6 television. This particular rule starts to acknowledge that we
7 have new communications media in the world and this rule
8 includes cable and newspapers in the count of the number of
9 voices underlying the competition that relieves the concerns
10 that we have.

11 The reason this is important is that the difference in
12 approach between this and the television cross-ownership rule
13 is what led the courts to strike down the television local --
14 the local television ownership rule. They said, why is it that
15 a voice -- newspaper and cable, count as voices for purposes of
16 the radio-television cross-ownership rule, but newspaper and
17 cable does not count as a voice in the local television
18 ownership rule? They say there may be an explanation for that,
19 but you haven't explained why you would draw such a distinction
20 and they vacated the rule as -- I'm sorry -- they remanded the
21 rule as arbitrary and capricious, and it's currently being
22 reconsidered by the FCC.

23 The other rule that's up is cross-ownership is not radio
24 television, it's newspaper-broadcast. Again it has its
25 origins. The current rule existed -- created in the 1970's

1 bars any newspaper from owning any broadcast outlet. And in
2 fact what's -- what's notable from the purposes of our
3 standpoint is this is not a tiered approach. It does not
4 matter how many other broadcast outlets or cable outlets or
5 radio outlets would be in the market. The newspaper
6 cross-ownership ban stands as an absolute bar no matter how
7 diverse the underlying media market is. There's another key
8 fact to this, is that in fact 54 broadcast-newspaper
9 combinations do exist. Fifty-four of them were either
10 grandfathered in or granted permanent waivers, and they now
11 exist. And it's one of the interesting things of the ongoing
12 review is, what has been the impact? It's a natural experiment
13 that we can start to understand the role of newspaper-broadcast
14 cross-ownership. This is one of the few rules that made it all
15 the way to the Supreme Court in its current form. It was
16 sustained by the Supreme Court in 1978 against a First
17 Amendment challenge, and it's currently being reconsidered by
18 the FCC, those initiated prior to the current view in 2001.
19 And that's part of an ongoing process that the FCC has taken
20 even outside the biennial process to evaluate its rules.

21 The other two rules are the ones national in focus.
22 This -- the national television station ownership rule limits
23 the number of stations you can own nationwide. The concerns
24 are different. This is owning a station in New York and L.A.
25 It will not reduce competition in L.A. You will have the same

1 number of choices in L.A., the same number of choices in New
2 York. What is really concerned is its impact on the national
3 market for advertising, the national market for program
4 production. And the original rule prohibited ownership of more
5 than three stations nationwide. And this has gone beyond a
6 series of liberalizing moves that became a rule -- started as a
7 rule of three, became a rule of five, rule of seven, rule of
8 twelve, steady broadening because they realize that there are
9 efficiencies if you own a station in Atlanta and L.A. and
10 Chicago; managerial efficiencies, operational efficiencies that
11 can make it very effective. And in fact what happened in the
12 1996 act, they abolished any absolute limitation on the number
13 of stations you can own. Subject to one very large caveat.
14 The caveat is that the combined reach of any station group
15 cannot exceed 35 percent of the national audience. This is
16 part of the -- this is a major issue because currently, after
17 the Viacom-CBS merger, Viacom is now currently in violation of
18 this at excess of 40 percent, granted waivers by the FCC, and
19 Fox's acquisition of Chris-Craft now exceeds the 30 -- they now
20 exceed the 35 percent cap.

21 As part of the biennial review process, the FCC considered
22 whether they should remove this rule in 2000 and they declined
23 to do so. The reason this is very much up for grabs right now
24 is judicial -- the courts have ruled that the FCC's decision
25 not to reconsider the national television station ownership

1 rule was arbitrary and capricious and they sent it back to the
2 FCC for reconsideration.

3 The last of the rules is the dual network rule. The dual
4 network rule originally was drafted because of the NBC blue and
5 red network, which was -- we had two networks in the same
6 control. Started off as a radio rule and they had -- again
7 they had the problems with the blue and red network in
8 television. In the rule -- the solution the FCC had was to
9 prohibit any company or any person from owning more than one
10 television network. In the world of cable and cable networks
11 and where there are 200 -- in excess of 200 cable networks
12 operating and 70 more on the drawing boards at any time, this
13 rule has been under reconsideration for quite some time, and in
14 fact there's -- certain recent merger activity placed
15 particularly strong deregulatory pressure on it. Viacom's
16 acquisition of CBS put it in a position where it had an
17 ownership interest above CBS and UPN. So there was a
18 reconsideration to the rule. The current rule allows ownership
19 of two networks unless both of the networks are in the top
20 four. That is ABC, CBS, NBC and Fox. CBS can own UPN. NBC
21 can own PAX. But the only thing -- the only merger that would
22 be barred under these rules would be a combination of the four
23 leading broadcast networks.

24 So those are the big -- those are the six rules. A very
25 quick perusal through them to give you a flavor of what's going

1 on. What are the policy considerations that are going to
2 underlie all of this?

3 Well, the first I would say is, this is often discussed in
4 terms of very bipolar terms where all the rules were almost
5 identical and it's a choice between regulation and
6 deregulation. I don't think that's true. All these different
7 rules will have different impacts on different segments of the
8 industry and different parts of the inputs that provide the
9 industry. It will affect the guilds differently. It will
10 affect the networks differently. It will affect the cable
11 station -- the cable operators and the television stations very
12 differently. And people who attempt to reduce this debate into
13 a clash between regulation and deregulation I think will
14 misunderstand the issues and misserve the people they're
15 representing because there will be winners and losers of
16 extremely unusual stripes no matter how these rules come out.

17 The other thing is the -- the other dominant theme that's
18 driving all this is the emergence of new media. Cable and
19 other forms, DBS now control 86 percent of the market. The
20 world in which these rules were written where broadcast
21 networks were three and dominated the television landscape is a
22 very, very different world. And its opened up the policy space
23 in fascinating ways.

24 The other thing that's interesting is the emergence of new
25 media -- not all media are created equal, and we have a very

1 complicated set of questions about, do you just count a radio
2 voice the same as you count a television voice? And even among
3 television voices, some are louder than others. Market share
4 matters and simply adding up the voices does not give you a
5 sufficiently sophisticated understanding of exactly how
6 competitive a market is.

7 The other thing is the economics of information. There's
8 a growing number of -- of insights provided by this. The
9 basic -- the most fundamental concept is what people call first
10 copy cost. Anyone who creates any information good knows that
11 all the costs are created in the first copy and the subsequent
12 copies are extremely cheap. That's true of movies, it's true
13 of music, it's true of newspaper and local information. And
14 what's fascinating is that the economics of information suggest
15 that some amount of media consolidation might be good. There's
16 a story out of Boston that a new -- this Boston newspaper
17 sought a waiver of the newspaper-broadcast cross-ownership ban,
18 saying that if you allow us to do that we will get another
19 newspaper into Boston. And if you don't allow us to take the
20 same content we develop for the newspaper and roll it out
21 across both outlets, we won't make enough revenues to survive.

22 That tells me that the relationship between consolidation
23 and local content and diversity of content and competition can
24 be quite ambiguous. Under certain circumstances, allowing
25 consolidation to occur can in fact enhance the amount of local

1 content and diversity of information available.

2 The last is there are significant efficiencies in media
3 consolidation. I'll give you an example out of my own hometown
4 of Nashville. Currently, UPN, WB and Fox jointly market
5 advertising time. Why? Because none of their shares
6 individually is enough to support a solo sales force, and
7 they're all targeting towards different segments of the market.
8 And a sales call can't meet a particular advertiser's needs,
9 and they find that it's much more effective for them to do so.
10 Would that be true in every market? Not necessarily. But it's
11 clear that we've now opened up the way we think about these
12 issues and ways to consider the possibility that consolidation
13 might actually allow new fledgling networks to succeed where
14 they otherwise couldn't.

15 Two last points. Legal considerations are on the table.
16 First is what Professor Spitzer -- Dean Spitzer -- mentioned is
17 the importance of empirical evidence. The 1996 acts that
18 requires the FCC to consider whether a rule is no longer
19 necessary is the result of meaningful economic competition, and
20 the courts have interpreted as requiring the FCC to have a
21 solid empirical foundation. A factual foundation for
22 everything it does. This has been a tremendous change. In the
23 past the FCC has been willing to wait and see what happens in
24 the market. It's pretty clear where this new regime as a legal
25 matter, waiting and seeing is no longer an option for the FCC,

1 at least under the D.C. circuit's interpretation of that.

2 The other problem is the empirical studies are quite mixed
3 on the affect of consolidation, and I think the fairest read as
4 a person who is not -- doesn't have any particular dog in this
5 fight is that if anything, it suggests that consolidation is
6 neutral with regard to diversity, localism and competition.
7 And in fact a large number of the studies suggest that allowing
8 more consolidation to occur would produce more diverse and more
9 local content on the airwaves and in the general media. That
10 is a controversial proposition. There are 12 studies by the
11 FCC. Some were criticized by their -- the people who want to
12 keep the regime going, but there's a very vibrant literature
13 that's largely getting -- not getting the attention it
14 belongs -- deserves.

15 And the last thing from a legal standpoint is what led to
16 the strike down of the one rules is that you'll discover that
17 the tiers and the willingness to consider alternative voices
18 are generally contradictory, and there is not really a unified
19 approach taken by the FCC. In fact, that's anathema to a legal
20 scholar. Being consistent across the board is one of the
21 obligations administrative agencies have, and it's one of the
22 problems that the FCC is confronting about how to unify all
23 this around a consistent perspective.

24 The last comment I will make is that this is only the big
25 major round in what's going to certainly be an enduring fight.